○ THE HON'BLE SRI JUSTICE BILAL NAZKI

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AND

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THE HON'BLE SRI JUSTICE S. ANANDA REDDY

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+ W.P.No. 14487 OF 2004

% Dated 3.11.2004

M/s Vaibhav Laminates

..... PETITIONER

AND

$ The Deputy Commercial Tax Officer IV, Office of Joint Commissioner, Commercial Taxes Enforcement Wing, Nampally, Hyderabad.

.....RESPONDENT

! Counsel for petitioner: Mr. M.v. J.K. KUMAR,

^Counsel for Respondent: Spl. G.P. for Commercial Tax,

<GIST:

> HEAD NOTE:

? Cases referred

1. 134 STC 473;
2. 114 STC 140;
3. 27 STC 1;

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRD DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 14487 of 2004

Between:

M/s Vaibhav Laminates Door No.5-3-638/644 Old Topkhana Rao, Osmangunj, Hyderabad Represented by its proprietor Mr.Prithivaraj Jain S/o. Jain aged years.

..... PETITIONER

AND

The Deputy Commercial Tax Officer IV, Office of Joint Commissioner, Commercial Taxes Enforcement Wing, Nampally, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue an appropriate writ, order or direction in the nature of writ of mandamus declaring the action of the respondent namely the Deputy Commercial Tax Officer-IV, Enforcement Wing, O/o the Joint Commissioner of Ct (Enft) Excise Commercial Taxes Complex, Hyderabad, in detaining the vehicle bearing No. AP 9 V 1576 along with laminated sheets (760) in transit in the course of inter-State purchase covered by sale invoice challan No.153/22-7-2004 also the self way Bill of the Petitioner and goods consignment notes (Lorry Receipts) issued by M/s Durolam Ltd, Plot No.1195A, 1196 Rajpur, Tal;.Kadi (NG) as inter state purchases of the petitioner in transit followed by the impugned proceedings of detention notice dated 27.7.2004 and another communication dt.12.8.2004 in Commissioner of Commercial Taxes, Enforcement Ref.No.Case VC/8/DCTO-IV/04-05 as illegal, arbitrary, opposed to the Principles of natural justice, without authority of law, without jurisdiction and ultra vires section 38 of Andhra Pradesh General Sales Tax Act 1957 as also contrary to the Judgments of the Hon'ble Supreme Court in 134 STC p.473 and grant such other relief or reliefs including compensation in a suitable quantum for the loss of business from 27.7.2004 on account of the unlawful and arbitrary detention till the date of release of goods in detention as also the demurrage charges claimed by the transport etc., in the interest of justice and in the facts and circumstances of the case.

Counsel for the Petitioner: MR.M.V.J.K.KUMAR

Counsel for the Respondent : Standing Counsel FOR COMMERCIAL TAX

The Court made the following :

HON'BLE SRI JUSTICE BILAL NAZKI

AND

HON'BLE SRI JUSTICE S. ANANDA REDDY

W.P.NO. 14487 of 2004

JUDGMENT: (Per Hon'ble Sri Justice Bilal Nazki)

The petitioner is a registered dealer engaged in purchase and sale of laminated sheets. He is an assessee for the purpose of sales tax. The petitioner's assessments were being made every year under the provisions of the Andhra Pradesh General Sales Tax Act, 1957 and Central Sales Tax Act, 1956 (hereafter referred to as "the State Act" and "the Central Act", as the case may be). According to the petitioner, he has been paying taxes on the sale turnovers registered in the books of accounts and disclosed to the department in the monthly returns. The laminated sheets were also liable to tax at the rate of 12% in terms of the relevant entry No. 17-A of VI Schedule to the Act which provides levy of tax at every point of sale. The laminated sheets were not liable to tax at the point of purchase. The petitioner submitted that he effected inter-State purchases of laminated sheets from one M/s. Durloan Ltd. in Gujarat and inter-State purchase was covered by relevant documents viz., invoice issued by the consignor, lorry receipt and advance way bill of the petitioner and the said consignment was being carried in goods vehicle bearing No. AP 9 V 1576 of Bombay Andhra Transport Organisation. While the vehicle was carrying the goods during the course of inter-State trade or commerce in transit, it was inspected on 26.7.2004. The inspection, according to the petitioner, revealed that transportation of laminated sheets was covered by Invoice No. 153, dt. 22.7.2004 issued by the manufacturer. According to the

instructions issued by the Commissioner of Commercial Taxes through a circular, every dealer who was purchasing laminated sheets from outside the State was supposed to issue advance way bills and accordingly the consignment was covered by way bill. According to the petitioner, no irregularities or defects or omission were found by the inspecting authorities in regard to the transportation of the goods. However, the respondent issued a detention notice on 27.7.2004. It is submitted that the there is no power under the State Sales Tax law to detain the goods, though the power is vested with the authorities to seize the goods and take further action thereafter including confiscation, if found that the goods were not accounted for. As such the notice issued on 27.7.2004 was without authority of law. The petitioner further submitted that having found no defect or irregularity in the documents accompanying the goods, the respondent maintained that the sale price of the goods contained in the sale bill was less than the prevailing market price in the State of Andhra Pradesh, therefore the goods were detained with the vehicle pending enquiry and a notice has been issued on 27.7.2004 to the driver of the vehicle Mr. Jafar. It is further submitted that the excise duty-cum-invoice challan No. 153 issued by the outside State supplier mentions the basic excise duty as well as the cess levied under the provisions of the Central Excise and Salt Act, 1944. The respondent, on 26.7.2004, issued a notice to the petitioner requesting him to quote the price/value at which he intends to sell the goods covered by the invoice for taking necessary action in the matter. The petitioner further contended that though he was under no obligation, yet showing respect to the sovereign State, he submitted a letter on 29.7.2004 indicating the proposed sale price which was inclusive of sales tax payable at 12% and other expenses. But the respondent detained the consignment on 27.7.2004 and entrusted the detained goods only on 10.8.2004 to the Central Warehouse. It is submitted that the action of the respondent in detaining the goods with vehicle was without authority of law. It is contended that even if it is assumed that the power of seizure of goods could also authorize the respondent to detain the goods, nevertheless such action was

arbitrary, improper and unjust as the documents were not defective. It is also contended that the goods vehicle along with the goods could not be detained for an alleged suspicion that the sale price charged by the manufacturer in other State for the goods sold to the petitioner was less than the local market price in Hyderabad. The question of under invoicing of goods would only arise if the petitioner had sold the goods in Andhra Pradesh, but the goods were detained while they were in transit. Section 38 of the State Act clearly prohibits the applicability of the provisions of the State Act to inter-State purchases or sales, as the case may be. It is also contended that the authorities of the department have no power to detain the goods and the provisions of the Central Act cannot be invoked by the authorities of the department in exercise of power under the State Act as the inter-State sale cannot be interfered with by the authorities under the State Act. In these circumstances the writ petition was filed and a direction was sought that the respondent should release the goods i.e., laminated sheets to the petitioner.

Counter-affidavit was filed by the respondent-Deputy Commercial Tax Officer, in which he submitted that while he was discharging his official duties duly undertaking the vehicular traffic check on 27.7.2004 at M.J. Market, near Osmanganj, Hyderabad, he inspected a lorry bearing No. AP 9 V 1576 which contained laminated sheets. The driver of the vehicle was asked to produce the documents relating to the consignment in question. The driver produced the documents. The documents revealed that the price shown for the goods i.e., laminated sheets was far below the market price. Therefore, in his opinion, there was a prima facie case against the petitioner about his indulgence in clandestine activity and in resorting to suppression of turnover for the purpose of evading sales tax on the true value of the goods. Therefore for further verification into the matter, a detention notice was issued on 27.7.2004 in exercise of the powers vested under Section 29 of the State Act. Thereafter an enquiry was made which revealed the following results,

a. According to the invoice produced by the driver the

vehicle is said to be carrying 760 laminated sheets whose price is shown far below the prevailing market price. But on physical verification, it was revealed that the lorry was carrying 1167 laminated sheets. Out of this 1167 laminated sheets, documents for only 760 sheets was available that too with low sale price when compared to prevailing market price. In respect of balance 407 sheets, it is absolutely not covered by any documents. But for the timely inspection, the petitioner would have sold this 407 sheets without knowledge of the department and thereby would have evaded rightful taxes due to the State. However, separate action is being taken in respect of these goods under Section 29 6 (B) of the APGST Act.

b. The consignment was not supported by advance way bill.

c. The present lorry did not undergo any check at the various check posts situated en-route. The check post authority (CT Department) did not have any occasion to check the consignments as the lorry was not apparently stopped at the designated check posts. The petitioner by-passed check post.

d. It is submitted that the facts make it clear that the petitioner has malafide intention to suppress the tru turnover in the documents with a view to evade sales tax. The general practice in the trade is found to under state the values of the goods at far below the prevailing market value with a view to evade tax on true value of the goods. The extent of under invoicing is found to the extent of 100% as is evident from the fact that a laminated sheet of 8 x 4 having thickness of 1 mm purchased from out side the state at a bill value of Rs.180-00 is being sold at Rs.400-00 per sheet. But the sale of the same sheet is being disclosed in invoices being issued by the dealer at

> Rs.220-00 to Rs.240-00. In order to safeguard the revenue of the State it was decided by the department to purchase these goods from the petitioner duly paying the price he desired. Accordingly the petitioner was requested to submit his quotation indicating the price at which he would be prepared to sell these goods normally to any other customer."

It is also submitted in the counter that the petitioner filed a letter on 29.7.2004 quoting a price of Rs.220/- per laminated sheet excluding sales tax at 12%. It is submitted that the petitioner having given the quotation has committed himself to sell the goods to the department at the rate indicated in the quotation. In the normal trade practice every dealer who issues a quotation for the sale of goods would readily come forward to effect sale, if the quotation given by him is accepted by the purchaser. However in the present case, for obvious reasons, the petitioner went back on the quotation given by him as he knew that the price quoted by him was far below the prevailing market price. It is further submitted that the petitioner purchased the goods, according to the papers, at Rs.180/- per laminated sheet of 8 x 4 having a thickness of 1 mm and he quoted the price of Rs.220/-. The petitioner now could not complain any financial loss as the department was offering the price quoted by him. The department has also accepted the offer given by the petitioner to purchase the laminated sheets at the rate of Rs.220/- per sheet and accordingly the petitioner was requested to raise a sale bill in favour of Joint Commissioner (Enforcement) along with advance cash receipt voucher. The petitioner having received the said notice did not respond. Subsequently a notice was issued to him on 18.8.2004. It is submitted that Section 38 of the State Act has no application to this case. It is further submitted that the petitioner was afforded personal hearing on 21.8.2004. However he did not appear personally, but sent a letter dt. 21.8.2004 stating therein that the personal hearing was useless in view of the matter pending in the

High Court.

The learned counsel for the petitioner has argued that Section 38 of the State Act prohibits applicability of the provisions of the State Act to inter-State purchases or sales and therefore the whole exercise made by the respondent was without authority of law. He also contends that the goods which were in the course of inter-State trade or commerce in transit and were not delivered to the petitioner, could not be made subject matter of the jurisdiction of the authorities under the State Act and detention of the goods was as such illegal. In this connection, he relied on various judgments of the Supreme Court. Section 38 of the State Act lays down,

> "38. Act not apply to sales or purchases outside the State, in the course of import or export, etc.: Nothing contained in this Act shall be deemed to impose or authorize the imposition of a tax on the sale or purchase of any goods, where such sale or purchase takes place,-
>
> i. out side the State; or
>
> ii. in the course of the import of the goods into, or export of the goods out of the territory of India; or
>
> iii. in the course of inter-State trade or commerce.
>
> Explanation:- The provisions of Chapter II of the central Sales Tax Act, 1956 (Central Act 74 of 1956), shall apply for the purpose of determining when a sale or purchase takes place in the course of inter-State trade or commerce or outside a State or in the course of import or export."

Section 28-A of the State Act lays down,

> "28-A Acquisition of the goods: (1) Where the authority prescribed has reason to believe that any goods of a fair market value exceeding five thousand rupees have been sold or purchased by a dealer, to or from another dealer or person, as the same may be, for a consideration which is less than fair market price of the goods and that consideration for such sale or purchase

as agreed to between the parties has not been truly stated in the invoice or delivery challan or any other document relating thereto, with the object of facilitating the reduction or evasion of the tax payable under this Act, the authority prescribed may, subject to the provisions of this section initiate proceedings for the acquisition of such goods.

(2) The powers conferred under sub-section (1) shall be exercised by the prescribed authority in respect of goods sold or purchased which, are in transit or in the possession of the seller or buyer or their agents.

……

……..”

Sub-section (2) of Section 28-A specifically empowers the authorities to exercise the power under sub-section (1) in respect of goods sold or purchased which are in transit or in the possession of the seller or buyer or their agents.

Now coming to the judgments relied on by the learned counsel for the petitioner, the judgment of the Supreme Court reported in *Ashok Leyland Ltd. Vs. State of Tamil Nadu and another* , in our view, would not be of any assistance to us because the controversy before the Supreme Court was altogether different than the controversy we have. It was interpretation of Section 69 of the Central Sales Act (74 of 1956) which was the bone of contention before the Supreme Court.

Another judgment on which reliance has been placed is *Ramanadh Poultry Farms and others V. Assistant Commercial Tax Officer and another* . This was a case where the goods were covered by genuine documents evidencing the purchase outside State and tax was sought to be collected at check post. The AP High Court held that it was not permissible. The question before the Court was in para-2,

“The petitioners are doing poultry business. It is their

case that the supplements or ingredients needed for poultry feed are purchased from registered dealers outside the State of Andhra Pradesh and the said goods are brought to their poultry farms in the course of inter-State purchase. It is also their case that such consignments are supported by valid documents such as way bills. The petitioners submit that the ingredients so purchased are meant for use in poultry feed for the purpose of captive consumption. The collection of tax on the goods so purchased at the check-post as if there was a taxable sale within the State is being assailed in these writ petitions."

Even in this case the High Court upheld the power of the authorities under Section 29 of the State Act. In para-5 the High Court noted,

"We find force in the contention of the petitioners that so long as the consignments of poultry feed or ingredients of poultry feed that are being transported from outside the State are covered by genuine documents evidencing the inter-State sale and purchase, the check-post officials have no jurisdiction to collect the tax in advance as if the sale had taken place. It is a different matter if the check-post officer, on a perusal of the relevant documents, comes to the conclusion that the documents are spurious or that the consignment of the goods is not supported by the requisite documents evidencing bona fide purchase from a registered dealer. Even in such a case, the check-post official is expected to record the reasons and arrive at a finding on the basis of a summary enquiry as per the relevant provisions contained in Section 29 of the Act read with rules 46 and 47 of the Andhra Pradesh General Sales Tax Rules, 1957. We make it clear that tax collection at the check-post cannot be resorted to on the presumption that the goods are likely to be sold clandestinely and the tax will be evaded by the petitioners. If the poultry feed or poultry feed ingredients are sold clandestinely and the taxable turnover is suppressed by the dealers, the sales tax authorities are not powerless to take necessary steps to make best judgment assessment and to levy penalties. But, an anticipatory collection of tax on the presumption that the dealers are likely to resort to clandestine sales at

a later point of time is not warranted under the provisions of the Act."

The learned counsel for the petitioner also relied on a judgment reported in *The Check Post Officer, Coimbatore and others Vs. K.P.Abdulla and Bros*. . Even in this case the Supreme Court upheld the power of the authorities under the Act to confiscate the goods carried in vehicle without prescribed documents. This Judgment is also not relevant for the purpose of the present case.

Even otherwise, after an offer was made to the petitioner that his goods will be purchased and he should quote the price, he categorically accepted the offer and quoted a price i.e., Rs.220/- per laminated sheet + 12% APGST. Nothing has been said by the petitioner about this offer and his acceptance except saying, "The petitioner though under no obligation, yet showing respect to the sovereign State, submitted a letter on 29.7.2004 indicating the proposed sale price which is stated to be inclusive of sales tax payable at 12% and other expenses."

The letter, dt. 26.7.2004 which was addressed by the department to the petitioner is quoted below,

"The attention of M/s. Vaibhav Laminates old Tophkana, Hyderabad is invited to the invoice No. 153, dt. 22.7.2004 for Rs.1,34,508.00 issued by M/s. Durclam Ltd., Rajpur (N.G.) through which sold 768 Decorative Laminated Sheets.

In this connection M/s. Vaibhav Laminated old Tophkana, Hyderabad are requirested to quote the price/value at which intend to sell the goods covered by the invoice for taking further necessary action in the matter.

…."

To this letter, the petitioner gave his reply on 29.7.2004 which

reads as under,

> "We have received your notice dated C.C.T. ENFT. RC No. D.C.T.O.IV th/LAMINATED SHEETS/2004, dated 26.7.2004.
>
> Herewith we are giving our quotation of sale price of Laminated sheets as per below:
>
> 24cm x 12cm Laminated Sheets Rs.220/- per sheet + 12% APGST."

The letter written by the department asking the petitioner to quote the price was unambiguous as also the reply given by the petitioner. There is another facet of the case. The petitioner in this writ petition claims only 760 laminated sheets and there is invoice only for 760 sheets, but in the counter-affidavit it is submitted that while checking the vehicle the respondent found 1167 laminated sheets being carried by vehicle.

Therefore the petitioner is entitled to a price at the rate of Rs.220/- per sheet + sales tax for 760 laminated sheets alone as he had not claimed all 1167 laminated sheets. The writ petition is accordingly disposed of. No costs.

_____

BNJ.

Dt.3.11.2004

KR

_____ SARJ.

NB:

LR Copies to be marked.

/BO/

ASST. REGISTRAR

One Fair copy to Hon'ble Mr. Justice Bilal Nazki (for his Lordship's kind perusal)

One Fair copy to Hon'ble Mr. Justice S. Ananda Reddy (for his Lordship's kind perusal)

To

1. The Deputy Commercial Tax Officer IV, Office of Joint Commissioner, Commercial Taxes Enforcement Wing, Nampally, Hyderabad.

2. 2 CCs to S.C.. for Commercial Tax, High Court Buildings, Hyd. (out).

3. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

4. The Secretary, A.P. Advocates' Association Library, High Court Buildings, Hyderabad.

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